

BEFORE THE TENNESSEE REGULATORY AUTHORITY AT

NASHVILLE, TENNESSEE

JUNE 25, 2001

IN RE:

**GENERIC DOCKET ADDRESSING
RURAL UNIVERSAL SERVICE**

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**DOCKET NO.
00-00523**

**ORDER AMENDING AND ADOPTING REPORT
AND RECOMMENDATION OF PRE-HEARING OFFICER**

This matter came before the Tennessee Regulatory Authority (the "Authority") at a regularly scheduled Authority Conference held on November 21, 2000 for consideration of the Report and Recommendation (the "Report") filed by the Pre-Hearing Officer on November 8, 2000. A copy of the Report is attached hereto as Attachment A.

During the regularly scheduled Authority Conference held on June 20, 2000, the Authority voted unanimously to open a docket to address Rural Universal Service and appointed Director Melvin J. Malone to serve as Hearing Officer for the purpose of preparing this matter for consideration on the merits by the Directors. An Order reflecting these actions was issued on July 14, 2000.

As stated in the July 14, 2000 Order, the Authority directed that rural companies be provided with copies of the Authority's Orders in Docket No. 97-00888 (Universal Service) and be invited to file comments with the Authority regarding the applicability of the decisions in Docket No. 97-00888 to the issues in this docket (Docket No. 00-00523)

by August 1, 2000.¹ The July 14, 2000 Order stated that all of the rural companies listed in footnote 1 therein shall be considered parties to this action (Docket No. 00-00523) unless the company provided written notice to the Authority that it would not participate in this proceeding by August 1, 2000.² The July 14, 2000 Order also directed BellSouth Telecommunications, Inc. (“BellSouth”) to inform the Authority of any future changes in its intraLATA toll settlements by filing a notice under this docket (Docket No. 00-00523).³

As stated in the Report⁴, as of November 8, 2000, the following companies petitioned for and were granted intervention in this matter: Time Warner Telecom of the Mid-South, L.P. (“Time Warner”)⁵; BellSouth⁶; MCI Telecommunications, Inc. d/b/a MCI Worldcom (“MCI Worldcom”)⁷; the Southeastern Competitive Carriers Association (“SECCA”)⁸; AT&T Communications of the South Central States, Inc. (“AT&T”)⁹; Sprint

¹ *Order Opening Docket for Purpose of Addressing Rural Universal Service and Appointing Hearing Officer*, Docket No. 00-00523, July 14, 2000, p. 4.

² *Id.* The July 14, 2000 Order states that “[f]or purposes of this docket, ‘rural companies’ shall include: Adamsville Telephone Co., Ardmore Telephone Co., Citizens Telecommunications Company of Tennessee, Citizens Telecommunications Company of the Volunteer State, Claiborne Telephone Co., Crockett Telephone Co., Humphreys Telephone Co., Loretto Telephone Co., Millington Telephone Co., Ooltewah/Collegedale Telephone Co., People Telephone Co., Tellico Telephone Co., Tennessee Telephone Co., United Telephone Co., and West Tennessee Telephone Co.” *See Order Opening Docket*, Docket No. 00-00523, July 14, 2000, p. 4, n. 1.

³ *Id.*, p. 4.

⁴ Report, Attachment A, p. 2.

⁵ Time Warner filed a petition for leave to intervene on June 30, 2000 and was granted intervention by Order dated October 13, 2000.

⁶ BellSouth filed a petition for leave to intervene on August 7, 2000 and was granted intervention in an Order dated October 6, 2000.

⁷ MCI Worldcom filed a petition for leave to intervene on August 29, 2000 and was granted intervention in an Order dated October 13, 2000.

⁸ SECCA filed a petition to intervene on August 31, 2000 and was granted intervention in an Order dated October 6, 2000.

⁹ AT&T filed a petition for intervention on September 22, 2000 and was granted intervention in an Order dated October 6, 2000.

Communications Company L.P. (“Sprint”)¹⁰; and Cellco Partnership d/b/a Verizon Wireless (“Verizon”).¹¹

As requested by the Authority, initial or reply comments were subsequently filed by Citizens Communications Companies (“Citizens”), the Rural Independent Coalition (the “Coalition”),¹² BellSouth, and SECCA.¹³ Also as requested, BellSouth notified the Authority that it had informed all incumbent local exchange carriers in Tennessee by mail of its desire to alter the current intraLATA toll settlement process.¹⁴

Pursuant to a Notice issued on October 19, 2000, a Pre-Hearing Conference was held on October 31, 2000 for the purposes of:

1. Consideration of issues to be addressed in this proceeding;
2. Setting a procedural schedule to completion;
3. Consideration of filing stipulation/admissions of facts and documents; and
4. Consideration of any item that may aid in the disposition of this matter.

The Conference was attended by representatives of BellSouth, Citizens, SECCA, the Coalition, Verizon, and AT&T. Pursuant to action taken at the Pre-Hearing Conference, the Pre-Hearing Officer issued the Report on November 8, 2000, which included lists of

¹⁰ Sprint filed a petition for leave to intervene on October 23, 2000 and was granted intervention in an Order dated October 31, 2000.

¹¹ Verizon filed a petition for leave to intervene on October 20, 2000 and was granted intervention in an Order dated October 31, 2000.

¹² The Coalition comprises the following companies: Ardmore Telephone Company, Inc.; Ben Lomand Rural Telephone Cooperative, Inc.; Bledsoe Telephone Cooperative; CenturyTel of Adamsville, Inc.; CenturyTel of Claiborne, Inc.; CenturyTel of Ooltewah-Collegedale, Inc.; Concord Telephone Exchange, Inc.; Crockett Telephone Company, Inc.; DeKalb Telephone Cooperative, Inc.; Highland Telephone Cooperative, Inc.; Humphreys County Telephone Company; Loretto Telephone Company, Inc.; North Central Telephone Cooperative, Inc.; Peoples Telephone Company; Tellico Telephone Company, Inc.; Tennessee Telephone Company; Twin Lakes Telephone Cooperative Corporation; United Telephone Company; West Tennessee Telephone Company, Inc.; and Yorkville Telephone Cooperative.

¹³ See Report, Attachment A, p. 2.

¹⁴ *Id.*

threshold issues, preliminary issues and legal issues, and requests for information. The Report also contains a proposed procedural schedule.

The Pre-Hearing Officer presented the Report to the Directors at a regularly scheduled Authority Conference held on November 21, 2000. The parties had filed no objections to the Report as of November 21, 2000. The Pre-Hearing Officer informed the Directors that the Consumer Advocate and Protection Division of the Office of Attorney General had filed a petition to intervene after the Pre-Hearing Conference and that he had granted the intervention.¹⁵

Director H. Lynn Greer, Jr. moved to amend the Report to add “a threshold legal and policy question” which he articulated in the following manner: “What are the implications, as a matter of law and policy, of the principle of competitive neutrality as used by the Telecommunications Act of 1996 with respect to universal service funding mechanisms?”¹⁶

After considering the Report and the proposed amendment, the Directors voted unanimously to approve the Report, as amended, and accept the recommendations set forth therein.

IT IS THEREFORE ORDERED THAT:

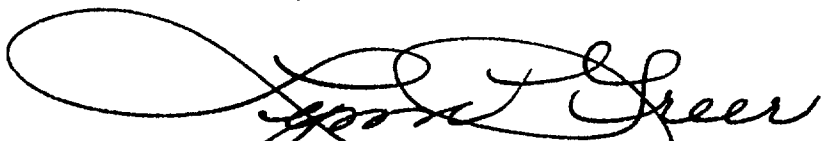
1. The Report and Recommendation of the Pre-Hearing Officer, as amended, attached to this Order as **Attachment A**, is approved and incorporated into this Order as if fully rewritten herein; and

¹⁵ See *Order Granting Intervention of the Attorney General & Reporter through the Consumer Advocate and Protection Division*, Docket No. 00-00523, November 7, 2000.

¹⁶ Transcript of Authority Conference, November 21, 2000, p. 23.

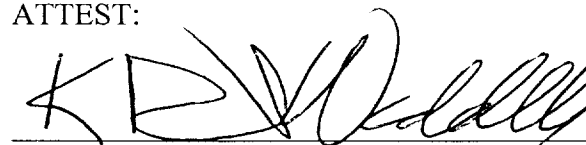
2. The following threshold legal and policy question is added to the list of issues attached to the Report: "What are the implications, as a matter of law and policy, of the principle of competitive neutrality as used by the Telecommunications Act of 1996 with respect to universal service funding mechanisms?"


Sara Kyle, Chairman


H. Lynn Greer, Jr., Director


Melvin J. Malone, Director

ATTEST:


K. David Waddell, Executive Secretary

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

November 8, 2000

IN RE:)
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GENERIC DOCKET ADDRESSING) **Docket No. 00-00523**
RURAL UNIVERSAL SERVICE)
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REPORT AND RECOMMENDATION OF PRE-HEARING OFFICER

Background

On June 20, 2000, the Authority voted unanimously to open a docket for the purpose of addressing Rural Universal Service and appointed Director Malone to serve as Hearing Officer for the purpose of preparing this matter for consideration on the merits by the Directors.¹ The Authority's June 20, 2000, decision in this matter "invite[d] rural companies² to file comments on the applicability of the decisions in Docket No. 97-00888 to this docket." Additionally, the Directors requested that BellSouth notify the Authority of any future changes in the intraLata toll settlements.

¹ See TRA, Docket No. 00-00523, *Order Opening Docket For Purpose Of Addressing Rural Universal Service And Appointing Hearing Officer* (July 14, 2000).

² All rural companies are considered parties to this action unless a party provides express written notice to the Authority of its intent to not participate in these proceedings. See *Order Opening Docket For Purpose Of Addressing Rural Universal Service And Appointing Hearing Officer*.

ATTACHMENT

A

Pursuant to the Authority's invitation, the following companies filed Initial and/or Reply comments: Citizens Communications Companies,³ Rural Independent Coalition,⁴ BellSouth Telecommunications, Inc., and the Southeastern Competitive Carriers Association ("SECCA"). Also, on August 4, 2000, BellSouth notified the Authority that it had mailed letters to all incumbent local exchange carriers in Tennessee informing those carriers of its desire to alter the current intralata toll settlement process.⁵ The following companies sought intervention in this matter and were granted such by the Hearing Officer:⁶ Time Warner Telecom of the Mid-South, L.P., BellSouth Telecommunications, Inc., MCI Telecommunications, Inc. d/b/a MCI Worldcom, SECCA, AT&T, Sprint Communications Company L.P., and Cellco Partnership d/b/a Verizon Wireless.

By *Notice of Status Conference* issued October 19, 2000, a Status Conference was scheduled for October 31, 2000. This Notice invited interested parties to file a list of proposed issues no later than October 25, 2000. The Rural Independent Coalition, AT&T, and Verizon Wireless were the only entities that chose to file an issues list. The Notice, furthermore, specified that the status conference was scheduled for the purposes of :

1. Consideration of issues to be addressed in this proceeding;
2. Setting a procedural schedule to completion;
3. Consideration of filing stipulation/admissions of facts and documents; and
4. Consideration of any item that may aid in the disposition of this matter.

³ Citizens Telecommunications Company of Tennessee, LLC and Citizens Telecommunications Company of the Volunteer State, LLC.

⁴ Ardmore Telephone Company, Inc., Ben Lomand Rural Telephone Cooperative, Inc., Bledsoe Telephone Cooperative, CenturyTel of Adamsville, Inc., CenturyTel of Clairborne, Inc., CenturyTel of Ooltewah-Collegedale, Inc., Concord Telephone Exchange, Inc., Crockett Telephone Company, Inc., Dekalb Telephone Cooperative, Inc., Highland Telephone Cooperative, Inc., Humphreys County Telephone Company, Loretto Telephone Company, Inc., North Central Telephone Cooperative, Inc., Peoples Telephone Company, Tellico Telephone Company, Inc., Tennessee Telephone Company, Twin Lakes Telephone Cooperative Corporation, United Telephone Company, West Tennessee Telephone Company, Inc., Yorkville Telephone Cooperative.

⁵ Commonly referred to as the Modified RDF.

⁶ Each party was given the opportunity to comment or object to all Petitions to Intervene. No party objected to the interventions.

Pre-Hearing Conference

The Pre-Hearing Conference was held before Director Malone on October 31, 2000. The parties in attendance were:

BellSouth Telecommunications, Inc. – **Guy Hicks, Esq.**, 333 Commerce Street, Suite 2101, Nashville, TN 37201

Citizens Communications Companies – **Guilford F. Thornton Jr., Esq.**, Stokes & Bartholomew, 424 Church Street, Suite 2800, Nashville, TN 37219

SECCA – **Henry Walker, Esq.**, Boulton, Cummings, Connors & Berry, P.O. Box 198062, Nashville, TN 37219

Rural Independent Coalition and – Time Warner Telecom of the Mid-South, L.P. - **Charles B. Welch, Jr., Esq.**, Farris, Mathews, Branam, Bobango & Hellen, PLC, 618 Church Street, Suite 300, Nashville, TN 37219

Verizon Wireless, Inc., - **Dan H. Elrod, Esq. and John Barclay Phillips, Esq.**, Miller and Martin LLP, 1200 First Union Tower, Nashville, TN 37219

AT&T, - **Garry Sharpe, Director of Government Affairs**,⁷ 414 Union Street, Suite 1830, Nashville, TN 37219

After considering the Authority's Phase I and Phase II decisions in Docket No. 97-00888, the Initial Comments and Reply Comments filed by the parties pursuant to the Authority's July 14, 2000, order, and the Proposed Issues Lists filed by request emanating from the Authority's October 19, 2000, *Notice of Status Conference*, the Pre-Hearing Officer developed the substance, sequencing, and categorization of issues and information devised specifically to aid in the orderly conduct of this proceeding.⁸ Parties were given the opportunity to append, refine, or otherwise modify the Threshold Issues List, the Preliminary Issues List, the Legal Issues List, and the Requests for Information from BellSouth and Rural ILECs presented by the Pre-Hearing Officer.

⁷ Appearing as Manager for the company's Tennessee business segment.

⁸ The Threshold Issues List, Preliminary Issues List, Legal Issues List, and Requests for Information from BellSouth and Rural ILECs are attached hereto.

but no party chose to do so at this time. In fact, parties were unanimous in their agreement to the inclusion of all issues and information requested. BellSouth did, however, state that it understood that parties reserved the discretion to address only those issues they considered to be relevant. The Pre-Hearing Officer did not disagree with BellSouth's assessment.

Proposed Procedural Schedule

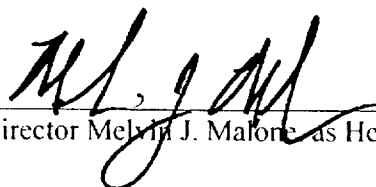
After some discussion on timing, the parties agreed to the following procedural schedule:

November 9, 2000 - 3:30	Briefs on Legal Issue
November 14, 2000 - Noon	Response on Information Request
November 14, 2000 - Noon	Briefs/Testimony on Threshold Issues
November 14, 2000 - Noon	Direct Testimony on Preliminary Issues
November 16, 2000 - Noon	Reply Briefs on Legal Issues
November 27, 2000 - Noon	Rebuttal Testimony on Threshold & Preliminary Issues

Recommendation

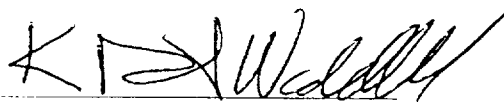
The Pre-Hearing Officer recommends that the Authority approve this report, including the interventions, the list of attached issues, and the procedural schedule.

Respectfully submitted,



Director Melvin J. Malone as Hearing Officer

ATTEST:



Executive Secretary

Generic Docket Addressing Rural Universal Service
Docket 00-00523
Threshold and Preliminary Issues

THRESHOLD ISSUES

1.
 - a. Is a universal service fund needed at this time for areas served by rural carriers? If not, when will a fund be needed?
 - b. Should the current earnings of the rural carrier be considered when determining the need and or size of a universal service fund? If so, how?
2.
 - a. Must a rural carrier waive its rural exemption prior to receiving funds from a Rural Universal Service Fund?
 - b. Must a rural carrier provide unbundled network elements prior to receiving funds from a Rural Universal Service Fund?

PRELIMINARY ISSUES

1.
 - a. Which services should be supported by an intrastate Rural Universal Service System?
 - b. Should advanced telecommunication services be supported by an intrastate Rural Universal Service Fund?
2.
 - a. Is the Carrier of Last Resort designation necessary when implementing a Rural Universal Service Fund? If so, how should Carrier/s of Last Resort be determined?
3.
 - a. Is a Rural Universal Service fund necessary to ensure affordability of rates in rural areas?
 - b. How should affordability of rates in rural areas be determined?
4.
 - a. How should implicit and explicit subsidies in the current rates of rural providers be determined?
 - b. Is there a statutory requirement or need to remove implicit subsidies from rates of rural providers?

5. a. Are any changes in state laws or TRA rules needed to implement a Rural Universal Service Fund?
6. a. What cost model/method and methodology should be adopted to calculate needed universal service support in rural areas? (i.e. forward looking, TELRIC, embedded, etc.)
b. Should the revenue benchmark approach as adopted by the TRA for non-rural providers be used for identifying high cost Universal Service support in areas served by rural carriers?
7. a. Should wireless-to-wireless calls and calls with wireless termination be included in the Rural Universal Service Fund?

**Generic Docket Addressing Rural Universal Service
Docket 00-00523**

LEGAL ISSUES

1. Does the TRA have jurisdiction over the toll settlement agreements between BellSouth and the Rural Local Exchange Carriers?
2. Should the withdrawal of toll settlement agreements between BellSouth and the Rural Local Exchange Carriers be considered in the Rural Universal Service proceeding? If so, how should they be considered?
3. Is the state Universal Service statute, as enacted, intended to apply to rate of return regulated rural companies, as such companies are defined under state law?

GENERIC DOCKET ADDRESSING RURAL UNIVERSAL SERVICE DOCKET

Docket 00-00523

Request For Information – BellSouth

For each company that BellSouth has a toll settlement contract in effect in Tennessee (including co-operatives), please provide the following:

- a) Originating intraLATA toll minutes for the 12 months ended June 30, 2000.
- b) Terminating intraLATA toll minutes for the 12 months ended June 30, 2000.
- c) For the 12 months ended June 30, 2000, provide the total net compensation paid to each company under the terms of the toll settlement agreement. Include in this calculation, revenues, access compensation and billing, and collection compensation.
- d) Assuming that the intraLATA toll compensation paid and received by these companies was calculated using BellSouth's current Tennessee intrastate access and billing and collection rates, what would the net compensation paid to the companies have been for the 12 months ended June 30, 2000.

Please provide all supporting calculations for each response. If you have any questions regarding this request, contact David Foster at (615) 741-2904, ext. 188.

GENERIC DOCKET ADDRESSING RURAL UNIVERSAL SERVICE DOCKET

Docket 00-00523

Request For Information – Rural ILECs

To assist the Authority in assessing the impact on Tennessee earnings resulting from the elimination of the toll settlement contracts, please provide the following information:

- a) Originating intraLATA toll minutes for the 12 months ended June 30, 2000.
- b) Terminating intraLATA toll minutes for the 12 months ended June 30, 2000.
- c) For the 12 months ended June 30, 2000, provide your company's total net compensation received under the terms of the toll settlement agreement. Include in this calculation, revenues, access compensation and billing and collection compensation.
- d) The revenue that would have resulted if your company had billed toll to end users for the twelve months ended June 30, 2000 (use existing BellSouth toll rates and your company's intraLATA minutes for the 12 months ended June 30, 2000 in calculating this amount).
- e) The revenue that would have resulted if your company had billed access charges on toll calls terminating on your company's network for the 12 months ended June 30, 2000 (use your company's existing interLATA access rates and intraLATA minutes of use for the 12 months ended of June 30, 2000 in calculating this amount).
- f) The expense that would have been incurred by your company for paying access charges for terminating toll calls on other carriers networks for the twelve months ended June 30, 2000 (use BellSouth's existing intrastate interLATA access rates and your company's intraLATA minutes of use for the 12 months ended June 30, 2000 in calculating this amount).
- g) Any other expense or revenue change that would have resulted if the settlement contracts had not been in place for the 12 months ended June 30, 2000 that is not identified above.

Please provide supporting calculations for each response. If you have any questions regarding this request, contact David Foster at (615) 741- 2904, ext. 188.